

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR COLUMBIA COUNTY**

THE STATE OF OREGON,

No. 19CR45050

Plaintiff,

v.

STATE'S SENTENCING MEMORANDUM

KYLE JARRED WROBLEWSKI,

Defendant.

COMES NOW the state, by and through Columbia County District Attorney Jeff Auxier,
and submits the following sentencing memorandum.

BACKGROUND

On May 1, 2018 St. Helens Police responded to a report of suspicious activity in which the defendant, a St Helens High School teacher and coach, was observed bringing an underage female student into his home during school hours. The defendant was arrested later that day for sexual abuse and contributing to the delinquency of a minor. On July 3, 2018, after the police had an opportunity to conduct a more thorough investigation, a Columbia County Grand Jury indicted the defendant on two counts of Official Misconduct in the First Degree and thirty-two counts of Sexual Abuse in the Second Degree against the victim. On July 9, 2018 the defendant was arraigned on the indictment and was allowed to remain out of custody over the state's objection.

1 On August 8, 2018 the defendant was arrested and charged with two counts of Contempt of
2 Court for violating the release agreement by having prohibited contact with the victim and coming
3 within 500 feet of St Helens High School on June 19, 2018.

4 On August 17, 2018 the defendant violated the court's release agreement again, this time for
5 sexual contact with the victim. Four days later the defendant was arrested and an additional Contempt
6 of Court case was filed. The defendant has remained in custody since that date.

7 On July 10, 2019, the defendant was arraigned on a new information, waived indictment, and
8 pled guilty to five counts of Sex Abuse in the Second Degree, including a previously-uncharged count
9 of Sexual Abuse in the Second Degree for the sexual intercourse he had with the still-underage victim
10 on August 17 while on release. The defendant also admitted to the existence of a sentencing
11 enhancement factor, specifically that "the offense involved a violation of public trust or professional
12 responsibility." (See OAR 213-008-0002(1)(F)). The sentencing was continued to August 18, 2019.
13 The parties agreement allows the court to impose any sentence it deems appropriate between a
14 minimum prison sentence of 24 months and a maximum prison sentence of 120 months. The parties
15 stipulated to a sentencing grid block of 6/B for count one and a sentencing grid block of 6/A for counts
16 two through five.

17 STATE'S SENTENCING RECOMMENDATION

18 The state is recommending a sentence of 90 months in prison to be imposed as follows.

1. **Sexual Abuse in the Second Degree (6/B):** 24 months DOC, concurrent to counts 2-5.
2. **Sexual Abuse in the Second Degree (6/A):** 30 months DOC, concurrent to counts 1, 3, 4
and 5.
3. **Sexual Abuse in the Second Degree (6/A):** 30 months DOC, concurrent to counts 1, 2, 4.
4. **Sexual Abuse in the Second Degree (6/A):** 30 months DOC, concurrent to counts 1-3.

5. **Sexual Abuse in the Second Degree (6/A):** upward durational departure to 60 months
DOC, consecutive to Count 4.

With respect to post-prison, the state requests 2 years of supervision on each count. The state requests that restitution be ordered for the victim and that the defendant be required to register as a sex offender pursuant to ORS 163A.010

AUTHORITY TO IMPOSE CONSECUTIVE SENTENCES

The Court may impose each sentence for each conviction in this case consecutively. On July 10, 2019 both parties stipulated that the Court has the authority to run each count consecutively as memorialized in the plea agreement submitted to the Court. The fact that the defendant demonstrated a willingness to commit more than one offense under ORS 137.123 and that none of the counts are incidental to the other counts is no longer a contested issue. Defendant had the opportunity marked by days and weeks between incidents to renounce his criminal conduct after each act, but instead continued to commit further crimes. There is a sufficient pause in the defendant's criminal conduct to afford the defendant an opportunity to renounce the criminal intent under ORS 161.067(3). In fact, defendant continued his criminal conduct (count 5) even after being criminally charged for such conduct and in violation of the Court's release agreement.

BASIS FOR SENTENCING RECOMMENDATION

The primary objective of Oregon’s statutory sentencing system is “to ***punish*** each offender appropriately, ***and*** to insure the security of the people in person and property, within the limits of correctional resources provided by the Legislative Assembly, local governments, and the people.” Oregon Administrative Rules 213-002-0001(1) (*emphasis added*). The state’s sentencing recommendation should be imposed because the defendant has repeatedly demonstrated that he is unwilling or unable to exercise self-control and targets vulnerable victims from his position of

1 trust. The state will demonstrate that the defendant has shown a consistent pattern of sexually
2 predatory behavior in which he has used his position of authority to not only gain access to this
3 victim, but to repeatedly engage in sexually inappropriate conduct with other students as well.
4 Defendant's repeated and brazen violations, committed while in a position of academic and athletic
5 trust as a teacher and coach at the school, show that the 90-month sentence is not only necessary
6 to protect the public, but is also appropriate retributive punishment because the defendant's
7 conduct so egregiously runs afoul of our community's values.

8 Although this is the first time the defendant is being held accountable criminally for his
9 conduct, it is not the first time he has been disciplined for inappropriate sexual behavior towards
10 students. The defendant was a high school teacher and track coach at St Helens High School and
11 was formally admonished multiple times for his sexual improprieties with female students. In
12 April 2008, when the defendant was 34, the school had their first conference with the defendant to
13 discuss these concerns. This meeting was memorialized in a conference summary letter dated April
14 28, 2008 (See Exhibit 1). Among the sixteen different items discussed include: "running hands
15 through girls hair and giving shoulder massages, smelling girls and referring to their "delicious"
16 perfume, behaving in a manner that students refer to as "too touchy" and a specific situation
regarding helping a female student stretch out at track." (see Exhibit 1). The defendant was given
a specific Letter of Directive setting out specific behavior expectations. Among those items listed
were, "You are to have no physical contact with students unless necessary to prevent injury to the
student or provide assistance in an emergency situation." (see Exhibit 2).

Despite the conference and written directives from 2008, the defendant continued to engage
in inappropriate behavior with female students. In 2009 the school received new complaints about
the defendant's conduct. This is evidenced by the school's response to the defendant's grievance

1 letter after he was disciplined for additional misconduct. (see Exhibit 3). This time, the defendant
2 made inappropriate comments about “missionary” being a sexual position with a female student,
3 was caught privately texting with a female student, served as an unapproved Saturday school
4 monitor for a female student on a Sunday, and continued to allow female students to congregate
5 around his desk during class hours. Of particular note is the portion of the School’s response to
6 the defendant’s grievance which states: “The punishment fits the infraction. You have been guilty
7 of serious misconduct; as indicated above, your conduct constitutes sexual harassment of students.
8 Your behavior is strictly forbidden by state and federal law as well as the District’s policies.” (See
9 Exhibit 3).

10 On May 5, 2009 the defendant was given another list of expectations from the school
11 district. The first point listed states, “You will not have physical contact with students unless
12 necessary to prevent injury to the student or to provide assistance in an emergency situation.” (see
13 Exhibit 4). The defendant was repeatedly told that his behavior was unacceptable and ultimately
14 illegal. It is noteworthy that these events occurred nearly a decade before the current case before
15 the Court. The defendant has engaged in grooming, pushing limits and using his position to access
16 and victimize this community for years. Any argument of misplaced affection, confusion or
17 human weakness on the part of the defendant requires the Court to ignore the documented history
18 of sexually predatory behavior that he has engaged in. Lastly, each of these disciplinary actions
was an opportunity for the defendant to reflect on his behavior and change his ways. The defendant
was threatened by his supervisors with the loss of his career because of his sexual conduct with
girls. The gravity of the situation appears to have either been lost on the defendant or consciously
disregarded.

1 The defendant's years of unchecked predatory conduct at school is just one example of his
2 unwillingness to conform his behavior to basic rules and laws. While on release for the initial
3 sexual abuse charges he committed against the victim, he violated the Court's release agreement
4 multiple times. Initially, he violated the release agreement by going to St Helens High School.
5 Then, the defendant violated the release agreement by encountering the victim while she was
6 running with her team after school prompting new charges by the state. On August 17, 2018 the
7 defendant violated his release agreement when he committed sexual abuse against the same victim
8 in the underlying case.

9 SEX ABUSE CASE HISTORY

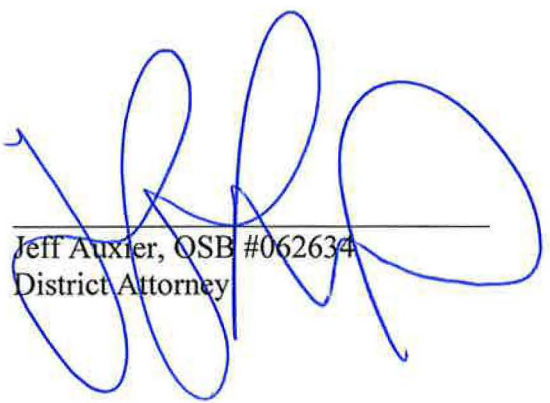
10 Defense has argued that there are numerous other cases involving sex abuse where the
11 defendant was given a probationary sentence. The case before the Court today is distinguishable
12 from those cases for a number of reasons. Primary among those reasons is that those cases do
13 not have the same facts or repeated violations of release, specifically repeated contact with the
14 victim or proof of prior failed disciplinary actions by their employers. To put it bluntly, the
15 defendant has engaged in brazen, unremorseful, and predatory conduct with young girls for over
16 a decade in manner that is incomparable to the cases the defendant argues are similar.

17 CONCLUSION

18 The Court should impose the state's recommended sentence because prison is the most
effective mechanism available to protect the victim and the community. The victim should be
given a meaningful opportunity to attend college and begin her young adult life without worry the
defendant will continue to pursue her. To date, the defendant has repeatedly demonstrated that
court orders, employment discipline, and the risk of additional criminal charges are not enough to

1 stop him from victimizing girls. This case is not a matter of poor judgment or misplaced affection,
2 but rather evidence of chronic, long term sexually predatory behavior in a school.

3 Respectfully submitted this 13 day of August, 2019.

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5 Jeff Auxier, OSB #062634
6 District Attorney
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St. Helens High School

LIONS

Date: April 28, 2008
From: Joanna Rau
Re: Conference Summary

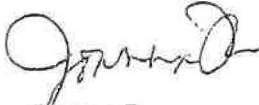
This letter is a summary of our conference on April 17th regarding the District's expectations concerning your relationship with students. We discussed the following situations:

1. Smelling girls and referring to their "delicious" perfume
2. Not defining an appropriate boundary between self and students, which refers to personal space and use of language and discussion topics
3. Behaving in a manner that students refer to as "too touchy"
4. Saying "Lake Titicaca" several times in class and leading students in laughter regarding the name of the lake
5. The belief that you have or have had the "pretty girls" as your teacher assistants
6. Students believing that you do not mean to come across sexually offensive, but do at times and that you try to "get a rise out of students" by making comments that evoke a reaction (explained as acting like one of the boys)
7. A situation regarding helping a female student stretch out at the track
8. Running hands through girls hair and giving shoulder massages
9. Girls hovering around your desk
10. The topic of use of protection ("wear your raincoat")
11. Comments about clothing or complements to girls on appearance
12. General concerns about a belief that there is a lack of gender equity and students belief that it interferes with consistent grading
13. Concerns that students believe the AP US History class is not rigorous enough and that they do not feel prepared for the AP test
14. A belief that a student noted a concern about teacher conduct in 2005, yet you clarified the situation as a disciplinary referral that a female student was disgruntled with
15. Students reporting that students were allowed to wear their volleyball spandex in your classroom at the end of the day (which you don't remember happening)
16. We reviewed the discussion that you and I had during the week of December 4-7th regarding a concern that had been brought forward. A student brought forward concerns regarding you making sexual comments, cracking inappropriate jokes in class and touching of student in class that made the reporting student feel uncomfortable. The student reported that you rubbed a student's shoulders in class for a few minutes during class while the rest of the students worked on a book assignment. I met with the student and she denied

you rubbing her shoulders. You and I met to discuss the situation and my goal was to bring this to your attention out of concern out of protection for your professional reputation. I advised you to error on the side of caution when it comes to relationships with females students. We discussed the issue for about five minutes and you shared your desire to ensure you actions do not come across as inappropriate. You were then out on leave with his January 7, 2008 until March 11, 2008.

In summary, you were extremely cooperative and have asked for help with this situation. You did not deny any of the allegations and concerns brought forward, yet brought clarification to the situations and a context for the behavior. You specifically clarified helping a female student stretch, yet pointed out that you were not stretching her groin in particular.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanna Rau', with a stylized, cursive script.

Joanna Rau

Assistant Principal of Curriculum and Instruction

c: Personnel File



St. Helens High School

LIONS

Date: April 28, 2008
To: Kyle Wroblewski
From: Joanna Rau
Re: Letter of Directive

This letter of directive is addressing the District's expectations concerning your relationship with students. Please refer to the conference summary for a review of our conversation on April 17th. The following are expectations of your behavior:

1. You are to have no physical contact with students unless necessary to prevent injury to the student or provide assistance in an emergency situation.
2. You are to avoid comments that have room for sexual interpretation. For example, the playful use of "Lake Titicaca".
3. You are to avoid telling students that their perfume smells delicious, touching students' hair and to commenting on choice of clothing.
4. In reference to your conviction to encourage students to use birth control, you are to limit your conversations and discussions in class about sexual education, yet it is appropriate to remind students that you hope they make good choices.
5. You are to inform administration if the counselors assign you more than two teacher assistants.
6. You are to not allow students around your teacher desk and computer space unless you are assisting them with a classroom assignment.

As Nanette Hagen and I mentioned in our meeting, it is paramount that this behavior changes. Failure to comply with these expectations may result in disciplinary action up to dismissal.

Please contact me immediately if you need further clarification of any of these expectations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joanna Rau", written in a cursive style.

Joanna Rau
Assistant Principal of Curriculum and Instruction

c: Personnel File



St Helens High School

Principal Nanette Hagen
Assistant Principal of Curriculum and Instruction B.G. Aguirre
Assistant Principal of Student Management Tony Simons

April 24, 2009

Kyle Wroblewski
59360 Mt. View Dr.
St. Helens, OR 97051

Re: Your Grievance of April 22, 2009

Dear Mr. Wroblewski:

I am in receipt of your above-captioned grievance. After review of that grievance, the collective bargaining agreement, and the results of my investigation and your reprimand of April 15, 2009, it is my decision that your grievance must be denied. The reasons for my decision are set forth below.

On April 15, 2009, I presented to you a reprimand which also imposed a three-day suspension without pay. Your grievance alleges that that reprimand and suspension violates the provisions of Article 26, Section 26.1 and subsections 1, 2 and 3. That is, your grievance alleges that the reprimand and suspension was without just cause and, the specific three elements of just cause that you allege to have been violated are whether or not the charges against you have been substantiated, whether or not the punishment meets the infraction, and, thirdly, whether this discipline has been administered in an evenhanded manner.

It is my decision that the reprimand and suspension does, indeed, meet these three standards.

The charges against you have been substantiated. In early April 2009, I met with you regarding three complaints about your conduct and relationship with students. Those complaints involved an improper comment to a female student regarding a "missionary" also being a sexual position, your private texting with a female student and your unapproved service as a Saturday school monitor for her on a Sunday afternoon, and a complaint that you were again allowing female students to congregate around your desk during class hours. After discussion of these matters with you, you admitted that your behavior had occurred and that you had been trying to change since you received a letter of directive dated April 28, 2008. That directive, among other things, directed you to

have no physical contact with students, to avoid comments that are left open for sexual interpretation, and to not allow students to congregate around your desk and computer space unless you are assisting them with a classroom assignment. Those directives were followed up with an admonition that your failure to comply with these expectations may result in disciplinary action up to dismissal.

I also note that you submitted a memorandum dated May 2, 2008, in response to the April 28, 2008, letter of directive. You admitted to your misconduct in that memorandum and you expressly agreed that you understood the expectations contained in the letter of directive and that you would follow that letter.

I found through my investigation that, notwithstanding the prior letter of directives and your acknowledgement of those directives, your improper behavior has continued again into this year. The gravity of your continued misconduct is magnified by the fact that your conduct constitutes sexual harassment of students. Your conduct has the effect of unreasonably interfering with a student's educational performance or it creates an intimidating, hostile, or offensive educational environment for those students. This conduct violates state and federal law, not to mention the District's performance standards. Your misconduct has been substantiated by the evidence that I received in my investigation and by your own admissions. This first standard has been satisfied.

The punishment fits the infraction. You have been guilty of serious misconduct; as indicated above, your conduct constitutes sexual harassment of students. Your behavior is strictly forbidden by state and federal law as well as the District's policies. It is on a par with harassment based on racial, religious, or ethnic considerations. Furthermore, your misconduct subjects the District, and you, individually, to serious civil liability. The punishment of a reprimand and a three-day suspension is warranted. In fact, more serious disciplinary action is probably also warranted even though it was not taken. (Your continued misconduct along these same lines will result in your dismissal. It is that serious.)

The discipline administered was done so in an evenhanded manner. As indicated above, your misconduct warrants serious disciplinary action. The District takes any form of discrimination seriously. (Sexual harassment is a form of prohibited sexual discrimination.) It does not tolerate this type of behavior from any employee. Your suspension from your coaching duties was also warranted given the nature of your infraction, that is, sexual harassment of female students and your coaching responsibilities with female students.

Finally, your suggestion that a Plan of Assistance would be more appropriate is out of the question. The District is not required to place you on such a plan in order to assist you in reducing your future acts of sexually harassing misconduct. You are to stop this type of behavior immediately and permanently, period.

Again, your grievance is denied. There is ample evidence that the just cause provisions set forth in Sections 26.1.1, .2, and .3 have been satisfied by the District.

Sincerely,

A handwritten signature in cursive script, appearing to read "N. Hagen".

Nanette Hagen, Principal

c: Tonya Arnold, SHEA President
Patricia Adams, Superintendent
District Counsel



GROWING THE FUTURE

474 North 16th Street

St. Helens, Oregon 97051

503.397.3085 tel

503.397.1907 fax

www.sthelens.k12.or.us

Patricia Adams
Superintendent

SCHOOL BOARD

Bill Crist

Jana Mann

David Morrisson

Benita Saatvedt

Rebecca Wallace

May 5, 2009

Kyle Wroblewski
59360 Mountain View Drive
St. Helens, OR 97051

Re: List of Expectations

Dear Mr. Wroblewski,

As explained in the May 5, 2009 level II grievance response, the District's expectations concerning your relationship with students remain as follows:

1. You will not have physical contact with student unless necessary to prevent injury to the student or provide assistance in an emergency situation.
2. You will not make comments that have room for sexual interpretation.
3. You will not comment on perfume and choice of clothing, and touch student's hair.
4. You are to limit your conversations and discussions in class about sexual education, yet it is appropriate to remind students that you hope they make good choices.
5. You will have no more than two teacher assistants at any given time.
6. You will not allow students around your teacher desk and computer space unless you are assisting them with a classroom assignment.

Failure to comply with these expectations may result in disciplinary action up to dismissal.

Respectfully,

Patricia Adams, Superintendent
St. Helens School District

CC Tonya Arnold, SHEA President
Nanette Hagen, SHHS Principal

Exhibit 4

Emailed
&
mailed 5-11-09

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing in the matter of the State of Oregon vs. Kyle Jarred WROBLEWSKI, Case No. 19CR45050 in the County of Columbia on:

David T McDonald, Attorney at Law
833 SW 11th Avenue Suite 625
Portland, OR 97205

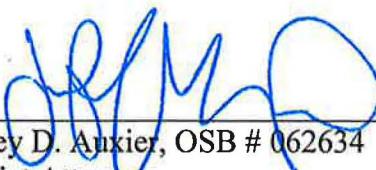
by the following indicated method or methods:

- ☐ by mailing full, true and correct copies thereof, certified by me as such, contained in a sealed, first class postage prepaid envelope, addressed to said attorney shown above at the last known address, and deposited in the post office at St. Helens, Oregon on the date set forth below.
- ☐ by causing full, true and correct copies thereof, certified by me as such, to be personally delivered to and leaving with the attorney at the attorney's last known office address listed above, on the date set forth below.
- ☐ by means of a telephone facsimile communication device to the fax number shown above, of the attorney referenced above, which facsimile communication device is maintained by the attorney referenced above and was operating at the time of service, which facsimile service was made on the date set forth below.
- ☐ by leaving in a receptacle designated for defense counsel pickup.
- ☒ by email.
- ☒ by eService.

TRUE COPY

- ☒ I hereby certify that the foregoing copy of this is a complete and exact copy of the original.

DATED this 13th day of August, 2019.



Jeffrey D. Auxier, OSB # 062634
District Attorney